

# Regulation of property conditions in the rental market

Submission to the issues paper for the *Residential Tenancies Act 1997* Review

## About VCOSS

The Victorian Council of Social Service (VCOSS) is the peak body of the social and community sector in Victoria. VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups, and individuals interested in social policy. In addition to supporting the sector, VCOSS represents the interests of disadvantaged Victorians and advocates for the development of a sustainable, fair and equitable society.

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VCOSS acknowledges the traditional owners of country and pays its respects to Elders past and present.

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# Executive summary

Under current laws, landlords can rent out a home that is not weatherproof, has no heating, window coverings or hot water. Homes are allowed to be very expensive to keep warm in winter or cool in summer. Bathrooms and bedrooms can be riddled with mould. Tenants are not entitled to bathing and cooking facilities.

**Minimum standards for rental homes** target these types of housing deficiencies. They are by no means ambitious or aspirational; they are merely basic requirements for a healthy, safe and secure, and affordable home.

Minimum standards are beneficial and achievable. Only a small percentage of homes will require significant repairs and improvements. Low-income and vulnerable households are more likely to live in poor-quality rental housing—this group will particularly see the benefits of improved housing conditions for health, children’s wellbeing and development, affordable energy use, and the ability to afford basic costs of living. These benefits have been shown to reduce government budget expenditure on healthcare and concessions.

Victoria is becoming an outlier by not having minimum standards for rental housing. Comparable jurisdictions have made the move and are managing the implementation of standards to avoid any adverse consequences for tenants and landlords. Victoria, too, can take this step by staging the implementation of minimum standards and making affordable finance available to low-income landlords or landlords who rent to low-income tenants, to help cover the up-front costs of repairs and improvements.

**Modification rights for rental homes** will particularly benefit low-income and vulnerable people. As renting becomes a normative housing experience for many Victorians, people will increasingly need to make modifications to their homes to cope with unavoidable circumstances in their lives, including disability, ageing, safety and security needs, essential energy consumption, and health conditions. Where modifications are necessary to support these needs, tenants should be entitled to make non-structural modifications without landlord consent. Many low-income and vulnerable households already go without minor modifications because they fear approaching the landlord for consent—the tenant may have struggled to secure a rental home in the first place, or fear retaliatory rent increases or eviction. An ongoing requirement for landlord consent to minor, non-structural modifications will particularly disadvantage these households and impair their ability to cope with disability, ageing, and safety and security needs, among others.

Minimum standards should be supported by **accessible enforcement pathways**. The Review should consider the introduction of a repairs and maintenance bond and a Housing Ombudsman.

# Recommendations

## Introduce minimum property standards

- Give the Minister power to prescribe mandatory minimum standards for rental properties.
- Stage the implementation of mandatory minimum standards.
- Establish financing schemes that help cover the up-front costs of meeting mandatory minimum standards.

## Introduce modification rights

- Where housing modifications are necessary to support the health, disability, ageing, safety and security, or essential energy consumption needs of the tenant or their family member, the tenant should:
  - have a right to make non-structural modifications without landlord consent
  - be required to seek landlord consent to structural modifications, providing that a landlord cannot unreasonably refuse consent to structural modifications for any of the reasons specified above
  - be permitted, but not required, to remove modifications at the end of a tenancy.

## Overcome barriers to enforcement

- The Residential Tenancies Act Review should consider the introduction of a repairs and maintenance bond and a Housing Ombudsman.

# Introduce minimum property standards

## Recommendation

- Give the Minister power to prescribe mandatory minimum standards for rental properties.

## Minimum property standards are beneficial and achievable

Introducing mandatory minimum property standards for rental housing:

- is well-targeted, as only a small percentage of homes require significant repairs and improvements
- is the only viable way of improving poor housing conditions for low-income and vulnerable tenants who have no market power
- reduces the social and economic disadvantage arising from poor housing conditions
- has precedents in comparable jurisdictions
- is achievable as most landlords are well-placed to meet minimum standards.

By legislating for executive power to make standards, more detailed discussion can take place on the content of standards, and staged implementation can be more easily undertaken.

## Limited amount of poor-quality private rental housing

The exact number of poor-quality rental homes in Victoria is uncertain as we lack quantitative data on their extent. As far as we know, the majority of Victorian rental homes are in good condition, and poor-quality homes comprise a small but significant minority. For instance:

- 68 per cent of Victorian tenants have described their home as in excellent or good condition when they moved in.<sup>1</sup>
- 80.3% of Australian private tenants reported their rental home had no structural defects during 2013-14.<sup>2</sup>
- Just over 10 per cent of Australian rental homes were classified as in poor-to-derelict condition between 2001 and 2011.<sup>3</sup>

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<sup>1</sup> Consumer Affairs Victoria, *Regulation of Property Conditions in the Rental Market*, Issues Paper, Residential Tenancies Act Review, 2016, p.20.

<sup>2</sup> Australian Bureau of Statistics, *Housing Mobility and Conditions, 2013–14*, cat. no. 4130.0.

<sup>3</sup> Emma Baker et al, *Acknowledging the health effects of poor quality housing: Australia's hidden fraction*, paper presented to the State of Australian Cities conference, 29 November 2013.

VCOSS's 'Decent not Dodgy' survey found that even among lower-cost rentals, the majority of rental properties surveyed across Melbourne and Geelong met the basic standards proposed by VCOSS or would do so with the installation of one or two basic and inexpensive items. Twelve per cent of properties were uninhabitable, featuring extensive mould, no heating, lack of electrical safety switches, or gaps in the walls and roof.<sup>4</sup>

Particular property deficiencies seem to be relatively limited. A Consumer Affairs Victoria (CAV) 2016 study found that 90 per cent or more of tenants had access to functioning water, electricity, toilet, laundry and shower facilities. Eighteen per cent of tenants reported having no heating, or heating that was in poor condition. A similar percentage has no access to cooking facilities or lacks locks on external doors.<sup>5</sup>

From this information, a minority of rental housing seems in average or poor condition. This means minimum standards are feasible for the rental market as a whole. A group of poor-quality properties will likely require a range of repairs and improvements to meet basic standards, but the majority will not require many changes. Many properties will not require any change, particularly those recently built or renovated in compliance with current building standards.

### **Low-income and vulnerable tenants have no market power**

Mandatory minimum standards have long-term benefits for low-income and vulnerable households. Private renting is the second most common tenure type for low-income households.<sup>6</sup> Low-income and vulnerable households are forced to compromise on housing quality due to a very low supply of affordable rental properties<sup>7</sup> and urgent needs for new accommodation; for example, when young people and women are trying to escape family violence.

Some groups face discrimination when applying for rental properties and have little or no choice in housing quality. People receiving income support, sole parents and people with disability are among those groups who report discrimination.<sup>8</sup>

Public tenants, sole parents, single people, Aboriginal people,<sup>9</sup> and people with mental or physical ill-health are most likely to live in poor-quality housing. Aboriginal people are particularly at risk.

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<sup>4</sup> Victorian Council of Social Service, *Decent not dodgy: Secret shopper survey*, June 2010, p.3.

<sup>5</sup> Consumer Affairs Victoria, *Regulation of Property Conditions in the Rental Market*, Issues Paper, Residential Tenancies Act Review, 2016, p.20.

<sup>6</sup> Australian Housing and Urban Research Institute, *AHURI Brief: Housing tenure by income level for Australian households, 2013-14*, [https://www.ahuri.edu.au/policy-development/ahuri-briefs/housing-tenure-by-income-level-for-australian-households?utm\\_source=website&utm\\_medium=homepage&utm\\_campaign=slider1](https://www.ahuri.edu.au/policy-development/ahuri-briefs/housing-tenure-by-income-level-for-australian-households?utm_source=website&utm_medium=homepage&utm_campaign=slider1).

<sup>7</sup> Stephen Rowley et al, *Subsidised affordable rental housing: Lessons from Australia and overseas*, Australian Housing and Urban Research Institute, August 2016, pp.10-13.

<sup>8</sup> Shelley Mallett et al, *Precarious housing and health inequalities: what are the links? – Summary report*, Hanover Welfare Services, University of Melbourne, University of Adelaide, Melbourne City Mission, 2011; Victorian Equal Opportunity and Human Rights Commission, *Locked out: Discrimination in Victoria's private rental market*, 2012, pp.10-13.

<sup>9</sup> VCOSS uses the term 'Aboriginal' to be inclusive of people from Aboriginal and/or Torres Strait Islander backgrounds.



Compared with non-Aboriginal people, Aboriginal people are eight times more likely to live in a private rental, and 18 times more likely to live in housing in poor condition.<sup>10</sup>

VCOSS members report low-income and vulnerable households frequently live in substandard rental housing, including housing that has no insulation, heating or window coverings, broken windows, mould and damp, leaking or caved-in roofs, inadequate ventilation, exposed or dangerous wiring, plumbing problems such as sewerage leakage, poor-quality or broken cooking facilities, or a lack of water supply.

### **Case study**

Tom<sup>11</sup> lives alone in a fibro-cement bungalow in a growing regional town north-west of Melbourne. The bungalow sits behind a house where a family lives. It's pretty basic, but it has a kitchen, living area, separate bathroom and kitchenette. It's quiet, fairly private and a safe place to live and it's near enough to town that Tom can walk there. The rent is reasonable for now but Tom continually frets about it going up. Now in his late 50s, Tom is unlikely to find employment again yet is only entitled to the Newstart allowance until he reaches pension age. His application for the Disability Support Pension due to mental health impairments has been rejected.

The bungalow is completely uninsulated and has no fixed heating or cooling units. There is no external shading or curtains on the windows. Draughts continuously flow through the open louvre windows in the kitchenette and bathroom which affects the temperature in the whole house year round.

In winter, Tom is forced to shift his bed to the living room so that he can try to keep at least one area in the bungalow warm. As his only option for heating is a portable electric fan heater, he finds that his winter electricity bill is very high and he is stuck with an unaffordable payment plan to keep the lights on. Despite adhering to regular payments, Tom is always in arrears with his retailer.

In summer the bungalow is unbearably hot as the cement sheet absorbs heat, so he tends to spend as much time as possible doing volunteer work in a nearby city. A 40km trip each way, this obviously puts further strain on his living allowance and increases his dependence on maintaining a viable car.

*Case study from VCOSS member organisation*

One study found 71 per cent of low-income tenants required repairs to their home, all relating to basic standards of amenity that can be mandated. They included requests for running water; functional ovens and stoves, windows, heating and electrical wiring; and repairs to fix leaking roofs

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<sup>10</sup> Shelley Mallett et al, *Precarious housing and health inequalities: what are the links? – Summary report*, Hanover Welfare Services, University of Melbourne, University of Adelaide, Melbourne City Mission, 2011.

<sup>11</sup> Name has been changed to protect the person's identity

and broken or unstable flooring. Of all tenants needing repairs, the most common problem (21 per cent) related to repairs to heating or cooling.<sup>12</sup>

### **Good-quality housing reduces social and economic disadvantage**

Low-income and vulnerable households disproportionately bear these effects because they are more likely to live in substandard housing than other groups.

Poor-quality housing compounds existing disadvantage. Good-quality housing contributes to:

- affordable energy costs and home heating and cooling
- good health including protection against extreme heat and cold
- the protection of children's wellbeing and development
- the ability to escape and recover from family violence
- the ability to afford the basic costs of living
- community resilience and social cohesion
- reductions in state government expenditure.

### **Affordable energy costs and home heating and cooling**

Private tenants represent 37 per cent of people unable to heat their home, the most common tenure type. Tenants are also the group who most often cannot pay their energy bills on time, at 42 per cent of people in energy payment difficulty.<sup>13</sup>

Poor-quality, energy inefficient homes are a major cause of unaffordable energy use.<sup>14</sup> Private tenants are more likely than owner-occupiers to live in housing with poor energy efficiency.<sup>15</sup> Common causes of energy inefficiency are little or no insulation; inefficient or faulty built-in heating, cooling and hot water devices; significant draughts caused by structural problems, such as broken windows and window frames, collapsing roofs, and holes in flooring; and a lack of window coverings. In 2009, 50 per cent of Victorian rental properties were uninsulated or effectively uninsulated. Only 11 per cent were deemed to be adequately insulated.<sup>16</sup> Some aged pensioners remain in bed all day in winter because they cannot afford to heat their home.<sup>17</sup>

Energy inefficient housing is harder and more expensive for people to keep warm or cool, leading to ill-health, affecting children's development and wellbeing, and leaving people with less money to pay for essentials such as food and education. Improved energy efficiency has real implications for

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<sup>12</sup> Footscray Community Legal Centre Inc, *Home sweet home: Act for the house not the tenant*, Footscray Community Legal Centre Inc, 2013.

<sup>13</sup> Francisco Azpitarte, Victoria Johnson and Damien Sullivan, *Fuel poverty, household income and energy spending: An empirical analysis for Australia using HILDA data*, Brotherhood of St Laurence, 2015, vii.

<sup>14</sup> Alternative Technology Association and One Million Homes Alliance, *2.5 billion reasons to invest in efficiency: Modelling the impact of improving the energy efficiency of Victorian houses on the Victorian energy concessions budget*, September 2012; Australian Government, *Your Home: Australia's guide to environmentally sustainable homes*, <http://www.yourhome.gov.au/housing/affordability>.

<sup>15</sup> Australian Bureau of Statistics, *Household energy consumption survey, Australia: Summary of results, 2012 – Tenure and landlord type*, cat. no. 4670.0.

<sup>16</sup> Department of Sustainability and Environment, *Housing condition/environmental performance of rental properties in Victoria*, July 2009.

<sup>17</sup> Australian Council of Social Service (ACOSS), *Supplementary submission to the Senate Select Committee on Electricity Prices*, ACOSS Paper 196, October 2012.

the health and wellbeing of all Victorian tenants and their children, particularly low-income and vulnerable households.

In England and Wales, minimum private rental energy efficiency standards are being phased-in over time. Mandatory standards were adopted because subsidies, tax incentives and other measures to improve energy efficiency were ineffective. Landlords were reluctant to fund improvements without receiving an immediate benefit.<sup>18</sup> This is a 'split incentive', meaning tenants receive the benefit of lower energy bills, but property owners do not receive any benefit unless the capital value improves when the home is sold. As in our proposal, the England and Wales energy efficiency standards aim to improve the worst properties,<sup>19</sup> rather than setting an ambitious, aspirational target for the market overall.

### **Good health including protection against extreme heat and cold**

Poor housing conditions cause ill-health, including from inadequate heating and cooling facilities, ventilation, sound insulation, plumbing, and cooking and washing facilities. These housing features influence physical and mental health by affecting the housing's adequacy as shelter and its available amenity.<sup>20</sup>

A recent study, using data from the Household, Incomes and Labour Dynamics in Australia (HILDA) survey, found a direct link between housing quality and health. Compared to people living in very good-to-excellent housing, people living in poor-to-very poor housing have lower general health, physical health and mental health. This link remained after controlling for population characteristics that influence health outcomes.<sup>21</sup>

People's health can be improved by mandating very basic property standards, such as cooking, washing and bathing facilities that are in good working order, and hot and cold running water. These facilities allow people to prepare nutritious meals and limit diseases spreading. Rental housing also needs to protect tenants against the health effects of extreme cold and extreme heat.

Australians are vulnerable to extreme cold, with 6.5 per cent of deaths in Australia attributed to cold weather, compared with 0.5 per cent from hot weather, largely due to poor housing quality.<sup>22</sup> Compared with many other states and territories, the Victorian population is more susceptible to cold-related deaths than heat-related deaths.

Inadequate warmth can lead to respiratory conditions and other health problems, particularly for older people, babies and people with chronic health conditions. These people are less able to withstand the physiological stress caused by cold homes and are more likely to spend time inside.

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<sup>18</sup> Explanatory memorandum, *Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015*, SI2015/962.

<sup>19</sup> Explanatory memorandum, *Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015*, SI2015/962.

<sup>20</sup> VicHealth, *Housing and health: Research summary*, August 2011.

<sup>21</sup> Emma Baker, Laurence H Lester, Rebecca Bentley and Andrew Beer, 'Poor housing quality: Prevalence and health effects', *Journal of Prevention & Intervention in the Community*, vol. 44:4, 2016, p.219.

<sup>22</sup> Antonio Gasparrini et al, 'Mortality risk attributable to high and low ambient temperature: a multi-country observational study', *The Lancet*, vol. 386, 2015, p.369.

Damp and mouldy conditions (often associated with inadequate heating and ventilation) are linked with respiratory illness.<sup>23</sup>

Housing quality is a significant risk factor during extreme heat events. Housing that is poorly ventilated, unshaded and lacking in cooling increases exposure to high temperatures. By contrast, housing that is well-ventilated, insulated, weather-proof and has window coverings protects against high internal temperatures and weather extremes and enables homes to be more affordably kept at a reasonable temperature.

Prolonged exposure to high temperatures can cause heat-related illnesses. These range in severity from heat cramps and heat syncope to heat exhaustion and heat stroke, marked by the body's progressive inability to thermoregulate. Heat stroke is a medical emergency and, if left untreated, can lead to death.

The State Government has assessed extreme heat to be a significant risk facing Victoria. With an increase in the duration and severity of extreme heat, Victoria's ageing population and growing incidence of chronic disease means the community is increasingly vulnerable to prolonged heat events. The State heat plan recommends all individuals recognise risks and take necessary actions to protect themselves, their families, vulnerable members of the community and their wider interests from the impact of heat.<sup>24</sup>

### **Heatwaves in Victoria**

The January 2009 heatwave that preceded the 'Black Saturday' bushfires caused 374 excess deaths.<sup>25</sup> In January 2014, Melbourne's extreme heat caused 167 excess deaths.<sup>26</sup> During both heatwaves pressure was placed on ambulance services, after-hours doctor consultations and the NURSE-ON-CALL service with significant rises in the number of emergency cases. There were also substantial increases in public hospital emergency department presentations, particularly for older people.<sup>27</sup> Heat-related deaths in Victoria are predicted to rise from 582 per year at present to 1,318 per year by 2050 as temperatures and the number of hot days increase.<sup>28</sup>

Social, medical, economic and built-environment factors place people at higher risk of adverse health and wellbeing outcomes during periods of extreme heat, and people who live in low-cost housing face much higher health risks during extreme heat events.<sup>29</sup>

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<sup>23</sup> Philippa Howden-Chapman et al, 'Effect of insulating existing houses on health inequality: cluster randomised study in the community', *British Medical Journal*, vol. 334, 2007, <http://www.bmj.com/content/334/7591/460>.

<sup>24</sup> Emergency Management Victoria, *State heat plan 2014*, Department of Justice, Victoria, 2014.

<sup>25</sup> Victorian Auditor-General, *Heatwave management: Reducing the risk to public health*, VAGO, Melbourne, 2014.

<sup>26</sup> Department of Health, *The health impacts of the January 2014 heatwave in Victoria*, Victorian Government, 2014.

<sup>27</sup> Department of Health, *January 2009 heatwave in Victoria: an assessment of health impacts*, Victorian Government, 2009; Department of Health, *The health impacts of the January 2014 heatwave in Victoria*, Victorian Government, 2014.

<sup>28</sup> Department of Environment and Energy, Australian Government, <https://www.environment.gov.au/climate-change/climate-science/impacts/vic> August 2016.

<sup>29</sup> Victorian Council of Social Service, *Feeling the heat: heatwave and social vulnerability in Victoria*, Melbourne, 2013.

Low-income households have a higher prevalence of heat-related health risk factors than the general population. These risks are typically associated with urban landscapes with the highest land surface temperatures.<sup>30</sup> The areas in Melbourne most vulnerable to heatwave effects include those with high proportions of elderly residents, non-English-speaking households and hot urban areas lacking vegetation.<sup>31</sup>

Older people and people with disability or chronic illness are most vulnerable to heat-related health risks, all groups overrepresented in rental housing.<sup>32</sup> Our population is ageing, with around 27% of the Australian population expected to be over the age of 65 years in 2036. Combined, an ageing population and increased periods of extreme heat could be expected to result in an increase in morbidity and mortality rates unless appropriate planning and intervention measures are put into place.<sup>33</sup>

In the event of a heatwave the Victorian Government recommends that people ‘do their best’ to keep their homes cool, such as installing window coverings, shade cloths or external blinds. However, despite doing their best, many thousands of Victorians are unable to keep their homes cool. In the absence of minimum rental property standards, people on low incomes often lack the money, capacity and choice to keep their homes cool in periods of hot weather.

There are significant opportunities to reduce severe heat-related health risk in rental housing stock. This includes through building upgrades, urban greening, and the development of ‘cool refuges’ for respite (such as having one room in the house that acts as a cool refuge). Adequate ceiling insulation can reduce indoor temperature extremes.<sup>34</sup> Using weather data from the January 2009 heatwave in Melbourne, simulations have shown that on average across all housing types, an inexpensive retrofit could reduce severe heat-related health risk by 25%.<sup>35</sup>

### **The protection of children’s wellbeing and development**

Children living in poor-quality housing have more respiratory problems than other children, leading to sleep loss, missing school, and restricted physical activity. Anxiety and depression in children are linked to substandard housing.<sup>36</sup>

Some children are at particular risk of living in poor-quality rental housing. Compared with children living with two parents, children living with a sole parent are 11 times more likely to live in a rental home, and three times more likely to live in poor-quality housing. Young mothers in private rental

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<sup>30</sup> Guy Barnett et al, *Pathways to climate adapted and healthy low income housing*, National Climate Adaptation Research Facility, Gold Coast, 2013.

<sup>31</sup> Margaret Loughnan et al, *A spatial vulnerability analysis of urban populations during extreme heat events in Australian capital cities*, National Climate Change Adaptation Research Facility, Gold Coast, 2013.

<sup>32</sup> Department of Health, *January 2009 heatwave in Victoria: an assessment of health impacts*, Victorian Government, 2009.

<sup>33</sup> Leigh Wilson et al, *Heatwave disasters in rural Australia: planning for an ageing population*, Abstract for the 12<sup>th</sup> National Rural Health Conference, University of Sydney, 2013.

<sup>34</sup> Guy Barnett et al, *Pathways to climate adapted and healthy low income housing*, National Climate Adaptation Research Facility, Gold Coast, 2013.

<sup>35</sup> Guy Barnett et al, *Pathways to climate adapted and healthy low income housing*, National Climate Adaptation Research Facility, Gold Coast, 2013.

<sup>36</sup> Shelter UK, *Chance of a lifetime: The impact of bad housing on children’s lives*, September 2006.



housing often have to battle with landlords to get rudimentary maintenance carried out, affecting ‘their capacity to provide basic care, such as being able to cook for children and keep them safe and warm’.<sup>37</sup>

Among Aboriginal children, poor housing conditions in both urban and regional areas are a major reason for lower rates of physical health in comparison with non-Aboriginal children.<sup>38</sup>

### **The ability to escape and recover from family violence**

The Royal Commission into Family Violence determined secure and affordable housing is one of three ‘pillars of recovery’ for victims of family violence. Family violence survivors may be living in rental housing when the perpetrator is excluded from home, on leaving a violent situation, or after spending time in crisis or transitional housing.<sup>39</sup> A lack of basic security and privacy standards in rental housing (for example, requirements for deadlocks on external doors and coverings on all windows) compromises the safety of survivors.

Family violence survivors can experience a deterioration in housing conditions when leaving a violent situation, but can be scared to complain to landlords or feel unentitled to ask for repairs.<sup>40</sup> This is unsurprising given the obstacles victims face in the private rental market, due to a very low supply of affordable rental housing, and discrimination by some landlords and real estate agents against sole parents, women using income support, Aboriginal women, women from culturally and linguistically diverse backgrounds, and women with disability.<sup>41</sup> When repairs are sought for basic housing deficiencies, slow or non-existent maintenance processes exacerbate the stress already experienced.<sup>42</sup>

### **The ability to afford basic costs of living**

Poor housing conditions increase financial stress and make it harder to pay for basic living costs. When a rental home’s poor energy efficiency causes high bills, less money is available for food, clothing, healthcare and the education of children.

High energy bills mean low-income tenants must make trade-offs between paying the rent, buying food, or sending their child on a school excursion.<sup>43</sup> Confronted with high, unavoidable energy

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<sup>37</sup> Shelley Mallett et al, *Precarious housing and health inequalities: what are the links? – Summary report*, Hanover Welfare Services, University of Melbourne, University of Adelaide, Melbourne City Mission, 2011.

<sup>38</sup> Alfred Dockery et al, *Housing and children’s development and wellbeing: evidence from Australian data*, Australian Housing and Urban Research Institute, March 2013, pp.52-53.

<sup>39</sup> State of Victoria, *Royal Commission into Family Violence*, 2016, p.67.

<sup>40</sup> NSW Women’s Refuge Movement and the University of Western Sydney Urban Research Centre, *The impact of housing on the lives of women and children – post domestic violence crisis accommodation*, February 2009, p.21.

<sup>41</sup> State of Victoria, *Royal Commission into Family Violence*, 2016, pp.67-69; NSW Women’s Refuge Movement and the University of Western Sydney Urban Research Centre, *The impact of housing on the lives of women and children – post domestic violence crisis accommodation*, February 2009; Victorian Equal Opportunity and Human Rights Commission, *Locked out: Discrimination in Victoria’s private rental market*, 2012, pp.10-13.

<sup>42</sup> NSW Women’s Refuge Movement and the University of Western Sydney Urban Research Centre, *The impact of housing on the lives of women and children – post domestic violence crisis accommodation*, February 2009, p.21.

<sup>43</sup> Brotherhood of St Laurence, ‘Rental properties are people’s homes: response to the consultation paper of the review of the Residential Tenancies Act’, August 2015.

costs, people with disability have gone without health essentials to pay their energy bills.<sup>44</sup> When poor housing conditions lead to ill-health, household budgets are further strained when illness results in unpaid time off work and additional medical expenses.

Poor-quality housing also affects the ability of low-income households to obtain insurance, because contents insurance is more expensive when basic housing features are lacking, such as deadlocks on external doors and secure, lockable windows.

### **Community resilience and social cohesion**

Poor-quality rental housing affects community resilience. When a tenant cannot rent a home meeting their long-term needs, they will have to move frequently, compromising their ability to establish connections and support networks.

Melbourne's new Resilience Strategy acknowledges that while Melbourne has been consistently ranked as one of the world's most liveable cities for more than a decade, these rankings do not consider factors such as housing affordability or account for inequality across Melbourne.

*While our city is liveable for those with easy access to essential services and a well-paying job, living in the world's sixth-most expensive city presents major difficulties for many Melburnians, particularly in areas of entrenched disadvantage and those located furthest from the central business district.*<sup>45</sup>

The Bushfire and Natural Hazards Cooperative Research Centre's *Australian Natural Disaster Resilience Index* proposes including property standards and length of residence as key indicators in measuring the coping and adaptive capacity, or resilience, of communities.<sup>46</sup> Similarly, Emergency Management Victoria acknowledges people are renting later into life, which changes the nature of people's engagement in communities. It identifies housing affordability, diversity, adequacy and tenure as key components of community resilience.<sup>47</sup>

### **Reductions in state government expenditure**

Poor housing conditions increase costs for the Victorian government in the areas of health, income support and energy and other hardship assistance (including financial counselling).

Low-income households are often eligible for energy and water bill concessions, which are paid as a percentage of the bill (17.5% in the case of energy bills, and 50% in the case of water bills). The less energy efficient the housing stock, the higher the costs faced by government from energy concessions.

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<sup>44</sup> Public Interest Advocacy Centre and Physical Disability Council of NSW, *More power to you: Electricity and people with physical disability*, 2012, pp.12-15.

<sup>45</sup> City of Melbourne, *Resilient Melbourne: Viable, sustainable, liveable, prosperous*, City of Melbourne, Melbourne, 2016.

<sup>46</sup> Melissa Parsons et al, *The Australian Natural Disaster Resilience Index: Conceptual framework and indicator approach*, Bushfire and Natural Hazards CRC, Melbourne, 2016.

<sup>47</sup> AECOM, *Mapping community resilience outcomes and resilience challenges - Stage 1 report*, prepared for Emergency Management Victoria, AECOM Australia, Melbourne, 2016.

If landlords were required to meet minimum property standards the Victorian government could reduce its health, income<sup>48</sup> and hardship support expenditure. A recent analysis by the European Union (EU) indicates that the cost of improving housing conditions across the EU could be quickly recouped from savings in the delivery of healthcare and a number of other publicly funded services. Across the EU as a whole, the investment would breakeven after one-and-a-half years due to savings such as lower healthcare costs and improved social outcomes. Savings would continue to accrue year-on-year.<sup>49</sup>

Improvements to housing conditions are already a proven, cost-effective way of strengthening Aboriginal health outcomes.<sup>50</sup>

The introduction of minimum property standards is likely to have other positive budgetary outcomes. In particular, there is likely to be increased payroll tax revenue as a result of new job opportunities in the construction and energy efficiency industries.

### **Comparable jurisdictions have introduced minimum property standards**

Victoria is a laggard in not having minimum property standards for rental housing. Minimum standards have been introduced in South Australia, Tasmania, New Zealand, England and Wales, and Ireland.<sup>51</sup> Some US states also have minimum rental property standards.<sup>52</sup> Across these jurisdictions, the standards commonly require that rental properties have:

- heating in living and other habitable areas
- electricity
- hot and cold water
- adequate ventilation
- structural soundness and weatherproofing
- bathing, cooking and sanitary facilities.

In addition to these very basic standards, several jurisdictions have recognised the need for low-level energy efficiency requirements. South Australia now allows standards to be prescribed about the energy and water efficiency of rental housing.<sup>53</sup> In New Zealand, all private rental homes must be insulated by 1 July 2019, while in England and Wales all rental properties must meet a relatively low-level energy efficiency threshold over a five-year implementation period.<sup>54</sup>

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<sup>48</sup> Alternative Technology Association and One Million Homes Alliance, *2.5 billion reasons to invest in efficiency: Modelling the impact of improving the energy efficiency of Victorian houses on the Victorian energy concessions budget*, September 2012.

<sup>49</sup> European Foundation for the Improvement of Living and Working Conditions, *Inadequate housing in Europe: Costs and consequences*, European Union, 2016, p.39.

<sup>50</sup> Vicki-Ann Ware, *Housing strategies that improve Indigenous health outcomes*, Resource sheet no. 25, Australian Institute of Health and Welfare and Australian Institute of Family Studies, December 2013.

<sup>51</sup> *Housing Improvement Act 2016* (SA) s 5; *Residential Tenancy Act 1997* (Tas) pt 3B; *Residential Tenancies Act 1986* (NZ) s 45; <https://tenancy.govt.nz/maintenance-and-inspections/warmdrysafe/>; *Housing Act 2004* (UK); *Housing (Standards for Rented Houses) Regulations 2008* (Ireland).

<sup>52</sup> Massachusetts State Sanitary Code, chapter 11; Department of Consumer Affairs California, *California Tenants: A Guide to Residential Tenants' and Landlords' Rights and Responsibilities*, July 2012.

<sup>53</sup> *Housing Improvement Act 2016* (SA) s 5.

<sup>54</sup> *Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015*, SI2015/962.

## Landlords are well-placed to meet minimum property standards

People and organisations, other than landlords, often bear the social and economic cost of substandard rental properties. Because landlords are not required to meet minimum standards, the burden falls on the community sector, government and the private sector to help low-income households living in poor-quality housing. For example, the costs of energy inefficiency are currently borne first and foremost by tenants (via high bills and adverse health effects); community organisations and energy retailers (who fund household energy audits and basic energy efficiency improvements for hardship customers); and government (via concession payments and higher health expenditure). Landlords, by contrast, are under no obligation to relieve some of these costs by meeting basic energy efficiency standards.

As VCOSS noted in its submission on rental housing security, while tenancy agreements may be a private contract, they have very public consequences for community wellbeing. It is legitimate for the Victorian government to regulate the nature of the tenancy agreement not only in the private interest of the parties involved, but in the public interest of all Victorians.

Most landlords have the financial capacity to meet minimum property standards. The majority of residential investment property owners are in the top two income quintiles (70.3 per cent of owners in 2006, 69.1 per cent of owners in 2014). Over 50 per cent of owners are in the top wealth quintile.<sup>55</sup> Most landlords are affluent in terms of both wealth and income. This is important, because even if a landlord's wealth is concentrated in illiquid assets that cannot be easily drawn down, it is clear that the average landlord has sufficient disposable income to comply with minimum standards over a staged implementation period.

Some landlords will have less capacity to meet these costs. In 2006, 15.2 per cent of residential investment property owners were in the bottom two income quintiles; this proportion had dropped very slightly by 2014 (13.9 per cent of owners were in the bottom two income quintiles).<sup>56</sup> Low-income landlords may require funding assistance to meet minimum property standards and to avoid having to sell the home if minimum standards cannot be met (see page 19).

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<sup>55</sup> Roger Wilkins, *The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 14 – The 11<sup>th</sup> Annual Statistical Report of the HILDA Survey*, Melbourne Institute of Applied Economic and Social Research, 2016, pp.74-75.

<sup>56</sup> Roger Wilkins, *The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 14 – The 11<sup>th</sup> Annual Statistical Report of the HILDA Survey*, Melbourne Institute of Applied Economic and Social Research, 2016, pp.74-75.

## Fair minimum standards

The Minister for Consumer Affairs, Gaming and Liquor Regulation should have the power to mandate minimum standards. This would allow flexibility in the specification and implementation of standards in response to tenant and landlord needs. As discussed below, a staged implementation process is required if a mandatory minimum standards regime is to be financially feasible for both tenants and landlords. A Minister's power would also allow the standards to better reflect contemporary norms in relation to good-quality housing (by contrast, amending the standards via Parliament would take longer and may mean that the standards become out-of-date).

The new South Australian legislation provides a potential model for how a Minister's power might be framed. Rather than specifying the details of standards, the *Housing Improvement Act 2016* (SA) allows standards to be prescribed under regulation in relation to a broad range of categories, including the construction of premises, cleanliness and sanitation, water and energy efficiency, kitchen, bathroom and laundry facilities, ventilation, and damp prevention.<sup>57</sup>

The purpose of mandatory minimum standards should be stated in the *Residential Tenancies Act 1997* (RTA), to guide the specification of standards. VCOSS considers that mandatory minimum standards should be aimed at producing healthy, safe and secure rental housing that is affordable to live in. To this end, VCOSS recommends the standards should include those listed in the table below, with appropriate technical specifications where necessary.

As is clear from Table 1, minimum standards aim to improve the worst-quality rental homes. Most of the proposed standards are by no means ambitious or aspirational; they are merely basic requirements for a healthy, safe and secure, and affordable home.

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<sup>57</sup> *Housing Improvement Act 2016* (SA) s 5.



**Table 1: Proposed elements of minimum rental housing standards**

| Standard  | Aim          |                     |                   |
|---|--------------|---------------------|-------------------|
|   | Healthy home | Safety and security | Affordable living |
| <b>Basic structural features</b>  |              |                     |                   |
| Structurally-sound, without damaged or rotting floors, roofs, walls or balconies  | ✓            | ✓                   |                   |
| Draught-proof and weather-proof   | ✓            |                     | ✓                 |
| Damp-free   | ✓            |                     |                   |
| Vermin-proof  | ✓            |                     |                   |
| Adequately ventilated, including fitted with: <ul style="list-style-type: none"> <li>- an opening door or window in each habitable room</li> <li>- a window or ventilation fan in every room with a bath, toilet or shower</li> </ul> | ✓            |                     | ✓                 |
| Fitted with windows in good working order and secure locks  | ✓            | ✓                   | ✓                 |
| Fitted with a sufficient number of hard-wired smoke detectors   |              | ✓                   |                   |
| Fitted with deadlocks on all external doors   |              | ✓                   |                   |
| Fitted with safe electrical and gas circuits, safety switches and sufficient power outlets in each habitable room   | ✓            | ✓                   |                   |
| Connected to electricity  | ✓            | ✓                   |                   |
| Connected to a landline   |              | ✓                   | ✓                 |
| <b>Heating and cooling</b>  |              |                     |                   |
| Fitted with at least one form of safety-tested, energy-efficient built-in heating (in the main living area) in good working order   | ✓            |                     | ✓                 |
| Fitted with ceiling insulation  | ✓            |                     | ✓                 |
| Fitted with coverings on all windows, free of mould and damage  | ✓            | ✓                   | ✓                 |
| Fitted with flyscreens on all opening windows   | ✓            | ✓                   | ✓                 |
| <b>Cooking, washing and bathing</b>   |              |                     |                   |
| Fitted with a kitchen and sanitary facilities (bath or shower, wash basin, toilet, and space and connections for a washing machine)   | ✓            |                     |                   |
| Continuously supplied with hot and cold potable water in every kitchen sink, bathroom sink, laundry sink, shower and bath   | ✓            |                     |                   |
| Fitted with a safety-tested oven and cooktop in good working order  | ✓            |                     |                   |
| Fitted with an energy-efficient hot water system in good working order  | ✓            |                     | ✓                 |
| Fitted with energy-efficient fixed water appliances (showerheads and toilet cisterns) in good working order   | ✓            |                     | ✓                 |

## Avoid unintended consequences of minimum standards

### Recommendations

- Stage the implementation of mandatory minimum standards.
- Establish financing schemes that help cover the up-front costs of meeting mandatory minimum standards.

### Stage the implementation of minimum standards

If landlords must immediately comply with the full suite of standards, they could be tempted to pass on costs by subjecting tenants to unsustainable rent increases. Low-income and vulnerable households are more likely to live in homes requiring repairs and improvements to meet minimum standards, and potentially face a greater chance of this occurring.

There is also the possibility that a low-income landlord may only be able to fund repairs and improvements incrementally. A short implementation period means landlords cannot spread costs over several years, creating a risk the landlord will be forced to sell the property. This could result in the tenant being evicted for the purpose of sale.

A staged, extended implementation process would alleviate these risks. Tasmania and the United Kingdom provide models for how this could be done. In Tasmania, minimum standards are being phased-in over several years. This process allows more time to make improvements under existing leases, while prioritising improvements to properties that are being newly let.

- Properties must be weatherproof and structurally sound by 1 August 2018 (three years) for leases made before 1 August 2015, and from 1 August 2016 for other leases.
- Properties must meet other minimum standards (for example, fixed heating in the living area, window coverings, bathroom and kitchen with requisite facilities) by 1 August 2018 for leases made before 1 August 2016, and from 1 August 2016 for other leases.<sup>58</sup>

In 2015, England and Wales introduced mandatory minimum energy efficiency standards for commercial and residential rental properties. From 1 April 2018, landlords will be prohibited from entering into new leases or renewals of leases for properties that have an energy performance rating below a certain level ('E' is the threshold level, on a ratings scale from A to G). By 1 April 2020, all private rental properties will be required to meet the minimum energy efficiency standards and achieve an E rating or above.<sup>59</sup>

In New Zealand, all rental properties must be insulated by 1 July 2019.<sup>60</sup>

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<sup>58</sup> Consumer Affairs and Fair Trading Tasmania, *Fact sheet: Minimum standards for premises – a guide for tenants and property owners*, June 2015, [http://www.consumer.tas.gov.au/\\_\\_data/assets/pdf\\_file/0019/322417/Minimum\\_standards\\_guide\\_for\\_tenants\\_and\\_property\\_owners\\_v2\\_0\\_2015.pdf](http://www.consumer.tas.gov.au/__data/assets/pdf_file/0019/322417/Minimum_standards_guide_for_tenants_and_property_owners_v2_0_2015.pdf).

<sup>59</sup> *Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015*, SI2015/962.

<sup>60</sup> <https://tenancy.govt.nz/maintenance-and-inspections/insulation/>.

As well as making minimum standards financially feasible, an extended implementation period allows time for landlords and tenants to be educated about their respective rights and responsibilities, and would reduce disruption to existing tenants where more extensive improvements (particularly those of a structural nature) are required.

Further, an implementation scheme that allows additional time to meet minimum standards under existing leases (as the Tasmanian scheme does) would encourage landlords to retain existing tenants and thereby improve security of tenure.

### **Finance the up-front costs of meeting minimum standards**

Financing should be made available to certain landlords to help cover the up-front costs of meeting minimum property standards. This financing should be restricted to low-income landlords or landlords who lease to low-income tenants, to avoid unsustainable repair and improvement costs being passed on to tenants.

On-bill financing schemes provide one model for financing rental property improvements. On-bill financing is already used in the commercial property sector and the residential property sector for the purpose of energy efficiency improvements (these schemes are often known as 'Environmental Upgrade Agreements'). For example, the Darebin City Council administers a 'Solar Saver Program' that pays the upfront costs of solar panel installation for low-income homeowners. The costs of the solar panels are then paid-back through quarterly rates payments over a 10-year period. This financing is interest-free.<sup>61</sup>

Financing schemes like interest-free, on-bill financing are likely to be more cost-effective for government over the long-term than continuing to meet the concession payment and health costs associated with poor-quality housing.

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<sup>61</sup> <http://www.darebin.vic.gov.au/Darebin-Living/Caring-for-the-environment/EnergyClimate>.

# Introduce modification rights

## Recommendation

Where housing modifications are necessary to support the health, disability, ageing, safety and security, or essential energy consumption needs of the tenant or their family member, the tenant should:

- have a right to make non-structural modifications without landlord consent
- be required to seek landlord consent to structural modifications, providing that a landlord cannot unreasonably refuse consent to structural modifications for any of the reasons specified above
- be permitted, but not required, to remove modifications at the end of a tenancy.

These recommendations build upon and extend the recommendations previously made by VCOSS in our earlier submission to the review,<sup>62</sup> after consultation with VCOSS members.

## Modification rights are necessary for healthy, safe and secure, and affordable housing

An increasing number of Victorians are living in private rental housing for longer periods of their lives. Home ownership has never been less affordable, leading more middle-income households to live in rental housing.<sup>63</sup> The decline of social housing stock has led to more low-income households living in private rental housing than previously.<sup>64</sup>

Over the last 30 years there has been an increase in the number of long-term tenants in Australia. Just over one third of private tenants are long-term tenants, having rented for 10 years or more. Low-income households are particularly likely to rent for long periods, representing nearly half of all long-term tenants in Australia.<sup>65</sup>

These developments mean 'private rental is far from a residual tenure for many households, and that private renting forms part of a normative housing experience for large numbers of Australian

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<sup>62</sup> Victorian Council of Social Service, *Making Rental Housing Secure: Submission to the issues paper for the Residential Tenancies Act 1997 Review*, December 2015, p.26.

<sup>63</sup> Kath Hulse, Margaret Reynolds and Judith Yates, *Changes in the supply of affordable housing in the private rental sector for lower income households, 2006-11*, Australian Housing and Urban Research Institute, 2014, pp.20-22.

<sup>64</sup> Wendy Stone et al, *Accessing and sustaining private rental tenancies: critical life events, housing shocks and insurances*, Australian Housing and Urban Research Institute, December 2015, pp.8-13.

<sup>65</sup> Wendy Stone et al, *Accessing and sustaining private rental tenancies: critical life events, housing shocks and insurances*, Australian Housing and Urban Research Institute, December 2015, pp.12-13.

households.<sup>66</sup> Victorian households will increasingly need to make rental housing modifications to cope with unavoidable circumstances in their lives, including:

- disability
- ageing
- safety and security needs (for example, as a result of family violence, or to raise children)
- affordable essential energy consumption
- health conditions.

At present, a tenant must obtain the landlord's consent for modifications.<sup>67</sup> Low-income and vulnerable households often have insecure tenure and are reluctant to seek consent for modifications. A vulnerable tenant can be particularly wary of 'rocking the boat' when they struggled to find affordable rental housing in the first place; fear retaliatory rent increases or eviction, even when a modification is self-funded; or are in arrears with rental payments. When tenants seek landlord consent, VCOSS members report there can be significant delays in receiving consent, if consent is provided at all.

The requirement for landlord consent for modifications compromises the safety, health and wellbeing of Victorian tenants and their children, particularly low-income and vulnerable households. VCOSS's preference is for the RTA to balance tenants' and landlords' interests by distinguishing between structural and non-structural modifications. Structural modifications are those that change the fabric of the home, such as remodeling of kitchens or bathrooms. Non-structural modifications are mainly concerned with the installation or alteration of fittings and fixtures, such as grab-rails and ramps.<sup>68</sup> The RTA presently imposes a disproportionate burden on tenants by prohibiting non-structural changes without landlord consent. Non-structural changes are often minor, but can significantly improve the lives of tenants. VCOSS recommends, where housing modifications are necessary to support the health, disability, ageing, safety and security, or essential energy consumption needs of the tenant or their family member, the tenant should:

- have a right to make non-structural modifications without landlord consent
- be required to seek landlord consent for structural modifications, providing that a landlord cannot unreasonably refuse consent to modifications for any of the reasons specified above.

The Minister should have the power to issue guidelines about common types of non-structural and structural modifications, to provide clarity to both tenants and landlords and reduce the potential for disputes. There is likely to be a common group of modifications for the purpose of health, disability,

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<sup>66</sup> Wendy Stone et al, *Accessing and sustaining private rental tenancies: critical life events, housing shocks and insurances*, Australian Housing and Urban Research Institute, December 2015, p.12.

<sup>67</sup> *Residential Tenancies Act 1997* (Vic) s 64.

<sup>68</sup> See Andrew Jones, Desleigh de Jonge and Rhonda Phillips, *The role of home maintenance and modification services in achieving health, community care and housing outcomes in later life*, Australian Housing and Urban Research Institute, November 2008, p.12.



ageing, and safety and security needs that can be developed in consultation with key stakeholders and refined over time.

Modification rights should recognise the needs of tenants' family members, including children and adults who may be spending a significant amount of time in the tenant's home for caring or other purposes, such as when the tenant takes care of an elderly parent or an adult child with disability. For example, people with a mobility impairment since birth can have long periods living in the parental home and then return to the parental home in later adult life.<sup>69</sup>

Landlord consent for structural modifications is in the interests of tenants and landlords. A consent requirement would:

- reduce the risk of a tenant carrying out an unsafe modification affecting the structural soundness of the building, and compromising the safety of the tenant, other household members and their guests
- be consistent with the proposed minimum standard that a rental property be structurally sound, noting a landlord cannot comply with this requirement unless they have some degree of control over structural modifications
- reduce the risk of costs being imposed on the tenant where the landlord requires removal of the modification at the end of a tenancy, such as where an unsafe structural modification detracts from the property's value.

### Modification rights in other jurisdictions

The recommended modification rights draw on those already operating in Europe. In the Netherlands, tenants can make changes to rental properties without landlord consent where those changes can be 'made undone' and removed without noteworthy costs at the end of the tenancy.<sup>70</sup> This would seem to encompass non-structural changes that can be easily removed, and is a broader right than the one recommended above, by not being tied to requisite grounds for modifications.

In Sweden, tenants are entitled to carry out non-structural modifications without landlord consent, such as the installation of blinds, painting and wallpapering, replacement of doors and handles, and the drilling of holes to hang pictures and other items, but may have to compensate the landlord if the changes reduce the utility value of the property.<sup>71</sup> Again, Swedish tenancy law is more generous than the recommendations made above, by not requiring particular grounds for modifications.

The recommended grounds for modifications under the RTA are explained below.

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<sup>69</sup> Andrew Beer and Debbie Faulkner, *The housing careers of people with disabilities and their carers*, Australian Housing and Urban Research Institute, May 2009.

<sup>70</sup> Dutch Civil Code, Book 7, Article 7:215 ('Changes to leased property').

<sup>71</sup> Christoph U Schmid and Jason R Dinse (eds), *My rights as a tenant in Europe: A compilation of the national Tenant's Rights Brochures from the TENLAW Project*, 1 December 2014, p.813.

## Disability modifications

There is a shortfall of accessible or adaptable private rental stock for people with disability, which is one of the biggest obstacles to entering the private rental market among this group.<sup>72</sup> People with disability often have relatively minor modification requirements that do not involve structural changes to a property, including the installation of grab-rails and ramps, non-slip flooring, shower seats, alarm systems, amplification devices, auditory signals and other assistive devices.

People with disability have a particular need for appropriately modified rental housing. While the majority (79 per cent) of people likely to be supported by a National Disability Insurance Scheme (NDIS) package are on a low or very low income, only 13.5 per cent live in social housing.<sup>73</sup>

People with disability can find it difficult to secure social housing: those living with their parents or in group homes are given low priority in housing allocations, and there is a shortfall of accessible or adaptable social housing stock.<sup>74</sup> As a consequence, low-income households can be forced to seek housing in the private rental sector.

In addition, people with disability are more vulnerable than the general population to cycling in and out of owner-occupied and rental housing. One study found that among private tenants with a sensory impairment, 80 per cent had fallen out of home ownership, due to an inability to meet mortgage repayments. Among private tenants with a mobility impairment, 32 per cent had previously owned a home but the onset of disability had tended to end home ownership.<sup>75</sup>

With changes to disability support funding, particularly through the NDIS, and a greater focus on independent living, more people will need accessible rental housing. For instance, for young adults transitioning out of the family home to independent housing, and as people with disability of all ages move out of, or avoid entry into, group homes or institutions.<sup>76</sup>

Some groups have a particular and immediate need for accessible private rental housing. Women with disability are more likely to be victims of family violence than women without a disability.<sup>77</sup> Family violence victims may be seeking private rental accommodation as a result of violence by an intimate partner, an in-home carer, staff at an institutional facility, or a co-resident where a woman lives in supported accommodation such as a group home.<sup>78</sup> Women with disability can be forced to return to the site of violence because they have been unable to find appropriate, accessible housing.<sup>79</sup> As a result, the Royal Commission into Family Violence recommended that there be ‘a

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<sup>72</sup> Illan Wisel et al, *Moving to my home: housing aspirations, transitions and outcomes of people with disability*, Australian Housing and Urban Research Institute, August 2015, pp.2, 62.

<sup>73</sup> Illan Wisel et al, *Moving to my home: housing aspirations, transitions and outcomes of people with disability*, Australian Housing and Urban Research Institute, August 2015, p.34.

<sup>74</sup> Illan Wisel et al, *Moving to my home: housing aspirations, transitions and outcomes of people with disability*, Australian Housing and Urban Research Institute, August 2015, p.2, ch.5.

<sup>75</sup> Andrew Beer and Debbie Faulkner, *The housing careers of people with disabilities and their carers*, Australian Housing and Urban Research Institute, May 2009.

<sup>76</sup> Illan Wisel et al, *Moving to my home: housing aspirations, transitions and outcomes of people with disability*, Australian Housing and Urban Research Institute, August 2015, p.4.

<sup>77</sup> State of Victoria, *Royal Commission into Family Violence*, 2016, pp.173-174.

<sup>78</sup> State of Victoria, *Royal Commission into Family Violence*, 2016, pp.175-179.

<sup>79</sup> State of Victoria, *Royal Commission into Family Violence*, 2016, pp.186-187.

concerted move towards increased use of individualised and flexible packages of funding' which provide for, among other things, adaptations to private rental properties to improve accessibility.<sup>80</sup> By at least permitting non-structural modifications without landlord consent (and enhancing rights in relation to structural modifications), the RTA could better protect women with disability who are attempting to escape family violence.

In general, people with disability can be especially disadvantaged by the requirement for landlord consent to all forms of property modification. People with disability are often vulnerable in the private rental market due to the low supply of accessible, affordable housing and discrimination by landlords and real estate agents.<sup>81</sup> If a rental home is secured at all, it can be considered risky to make a request of the landlord and potentially compromise the lease. When landlord consent to a modification is sought, people with disability have reported an unwillingness by landlords to agree to even modest modifications.<sup>82</sup> It is important that tenants have a right to make non-structural modifications without having to seek landlord consent, when these modifications are necessary to support disability needs, and that a landlord not be permitted to unreasonably refuse consent to structural modifications that support disability needs.

### **Modifications to support ageing in place**

As the population ages and more people age at home, older tenants need flexible modification rights. Older tenants have similar modification needs to people with disability; that is, a common need for often minor, non-structural accessibility modifications, such as the installation of ramps, grab-rails and shower seats. As people age, home modifications reduce the likelihood of admission to hospital or an aged care facility, particularly as a result of falls. Assistive technologies such as sensors and alarms can allow older people to monitor and manage complex health conditions in their home, while devices that accommodate sensory changes (for example, amplification devices) or improve safety and security (for example, alarms and security lighting) enable greater independence.<sup>83</sup>

Home modification service providers report that older people living in private rental housing face considerable barriers to home modification compared with homeowners and public housing tenants. Service providers find private tenants are reluctant to seek major modifications unless they have a long-term lease (which is rare; most leases in Victoria are for 12 months, or month-to-month), and face opposition from landlords to major and minor modifications if they are seen to be permanent.<sup>84</sup> Competitive rental markets are also making it difficult for older tenants to negotiate

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<sup>80</sup> State of Victoria, *Royal Commission into Family Violence*, 2016, pp.198-199.

<sup>81</sup> Illan Wisel et al, *Moving to my home: housing aspirations, transitions and outcomes of people with disability*, Australian Housing and Urban Research Institute, August 2015.

<sup>82</sup> Andrew Beer and Debbie Faulkner, *The housing careers of people with disabilities and their carers*, Australian Housing and Urban Research Institute, May 2009.

<sup>83</sup> Andrew Jones, Desleigh de Jonge and Rhonda Phillips, *The role of home maintenance and modification services in achieving health, community care and housing outcomes in later life*, Australian Housing and Urban Research Institute, November 2008, pp.14-19.

<sup>84</sup> Andrew Jones, Desleigh de Jonge and Rhonda Phillips, *The role of home maintenance and modification services in achieving health, community care and housing outcomes in later life*, Australian Housing and Urban Research Institute, November 2008, p.137.

modifications with landlords. The problems faced by older people are reflected in the low rate of aged care modifications in private rental housing compared with owner-occupied housing.<sup>85</sup>

### **Safety and security modifications**

The current restrictions on modifications compromise the safety of women who are escaping family violence. There are only limited protections for family violence victims under the RTA at present. There is only a provision that allows a person protected under a family violence intervention order to change any external lock, including a lock in a master key system, when a tenant is excluded from the rental premises under the family violence intervention order.

The Royal Commission into Family Violence recommended that the RTA review consider whether a landlord should be prevented from unreasonably withholding consent to a modification when the tenant is a victim of family violence and they wish to reasonably modify their home to improve its security.<sup>86</sup>

Given that often minor, non-intrusive modifications could significantly improve the ability of family violence victims to escape and recover from harm, it would be preferable for tenants to have a right to make non-structural modifications without landlord consent for the purpose of safety and security. Such modifications could include the installation of security cameras, alarm systems and security lighting. Structural modifications, such as new fencing and gates, would require landlord consent, provided that a landlord cannot unreasonably refuse consent when the modification is necessary to support safety and security needs.

People raising children also have safety and security needs that are affected by the current restrictions on rental modifications. Single parent families with dependent children are more likely to be private tenants than homeowners with a mortgage. Further, while the majority of couples with children are homeowners with a mortgage, private renting is the second most common tenure type among this group.<sup>87</sup>

A variety of basic, non-structural modifications can be required to make homes safe for children, including installing child-safe locks on kitchen, bathroom and laundry cabinets; safety gates on doorways and stairs; and wall brackets or mounts for TVs, cabinets and shelves. It can also be necessary to shorten or clip cords on blinds and curtains to prevent children being strangled, and install finger protection strips on door hinges to prevent crushed, fractured or amputated fingers.<sup>88</sup> All of these modifications are minor, easily removed and do not detract from the value of the home.

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<sup>85</sup> Andrew Jones, Desleigh de Jonge and Rhonda Phillips, *The role of home maintenance and modification services in achieving health, community care and housing outcomes in later life*, Australian Housing and Urban Research Institute, November 2008, p.137.

<sup>86</sup> State of Victoria, *Royal Commission into Family Violence*, 2016, p.125.

<sup>87</sup> Australian Institute of Health and Welfare, *Australia's Welfare 2015: Australia's welfare series no. 12*, cat. no. AUS 189.

<sup>88</sup> [http://raisingchildren.net.au/articles/pip\\_safety\\_indoors.html/context/578](http://raisingchildren.net.au/articles/pip_safety_indoors.html/context/578);

[http://raisingchildren.net.au/articles/little\\_fingers\\_and\\_doors\\_and\\_hinges.html/context/578](http://raisingchildren.net.au/articles/little_fingers_and_doors_and_hinges.html/context/578).

With the current restrictions on modifications, tenants cannot adequately protect their children from harm if they fear requesting landlord consent to even minor modifications, or if consent is unreasonably refused.

### **Energy and water efficiency modifications**

Private tenants are the largest group of people who either cannot heat their home or afford to pay their energy bills.<sup>89</sup> A range of non-structural modifications would better allow private tenants to affordably heat their homes, particularly low-income households, and support their health, disability and ageing needs. These types of modifications include the installation of door and window sealing, energy-efficient lighting, curtains and blinds, and new fixed appliances such as heaters.<sup>90</sup>

Several community organisations and energy retailers conduct and fund energy retrofits for low-income and vulnerable households living in homes with poor energy efficiency and facing unaffordable energy bills. Retrofit programs are operated by the Yarra Energy Foundation, the Brotherhood of St Laurence and Kildonan UnitingCare, among others. Renting can be a major barrier for people to receive a funded retrofit. For one VCOSS member organisation, the majority of its retrofits are provided to low-income homeowners, because private tenants are too scared to request landlord consent for modifications, or fail to obtain consent. Another member reports they routinely disclose landlord consent requirements when conducting private rental energy audits, deterring some tenants from taking-up the offer of a fully-funded retrofit.

The requirement for landlord consent to even basic, non-structural energy efficiency modifications is hampering the upgrade of rental housing, at the expense of tenants' health and their ability to afford basic living costs.

### **Health modifications**

Common health conditions during people's lives require home modifications, often of a minor and non-structural nature. For example, when returning from hospital, a person may need a basic shower seat or non-slip flooring installed in their bathroom for recovery following surgery.

Flexible modification rights are also needed for private tenants to benefit from 'hospital-in-the-home' (HITH) programs, which provide acute hospital care to people in their own home. HITH programs can only be offered if the person is living in a suitable environment. HITH programs improve people's recovery and produce significant government savings. Private tenants also require flexible modification rights to benefit from Health Independence Programs, which provide hospital substitution and diversion services by supporting people in their homes.<sup>91</sup>

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<sup>89</sup> Francisco Azpitarte, Victoria Johnson and Damien Sullivan, *Fuel poverty, household income and energy spending: An empirical analysis for Australia using HILDA data*, Brotherhood of St Laurence, 2015, vii.

<sup>90</sup> See Yarra Energy Foundation, Home Energy Retrofit Program, [http://www.yef.org.au/home\\_energy\\_retrofit\\_program](http://www.yef.org.au/home_energy_retrofit_program).

<sup>91</sup> Victoria State Government, 'Hospital in the Home', <https://www2.health.vic.gov.au/hospitals-and-health-services/patient-care/acute-care/hospital-in-the-home>; Andrew Page, *Taking Healthcare Home*, University of Western Sydney, 2016.



## Removal of modifications

At present, a tenant who has made modifications to their home, including with the landlord's consent, must restore the home to its original condition (fair wear and tear excepted), or compensate the landlord for the cost of restoring the home to its original condition, before the tenancy ends.<sup>92</sup> VCOSS members report that this requirement deters low-income and vulnerable tenants from requesting consent to modifications, because they fear the costs of removal and rectification works.

A tenant should not be required to remove modifications, or pay the costs of removal and restoration, when the modifications were necessary to support their health, disability, ageing, safety and security, or essential energy consumption needs, or those of a family member. The presumption should be that these modifications add value to the home in terms of both its marketability as a rental home and its capital value.

Accessibility measures allow a home to be marketed to a much wider pool of potential tenants, particularly as the population ages and more people with disability seek rental housing as a result of NDIS funding and an increasing shift towards independent living.

An energy efficient home is also a more marketable home, because it improves the net affordability of the property for tenants.

Security and safety modifications also appeal to a broad group of tenants who wish to benefit from improved personal safety and children's safety, and reduced premiums for contents insurance; for example, where an alarm and other security improvements have been made by the previous tenant.

While a tenant should not be required to remove modifications at the end of a tenancy as a matter of course, they should have the right to remove modifications if they so wish, given that modifications will be overwhelmingly self-funded by tenants or a third party. When low-income and vulnerable households have short-term tenures and move frequently, it is important that they be able to take essential accessibility, safety and other devices to their new homes when necessary.

The New South Wales *Residential Tenancies Act* provides a possible model for how such a scheme might work. Under that Act, there is no requirement for removal of modifications at the end of a tenancy, but a tenant may, at their own cost, remove any fixture that they have lawfully installed. However, tenants are not permitted to remove a fixture without the consent of the landlord if the fixture was installed at the landlord's expense.<sup>93</sup>

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<sup>92</sup> *Residential Tenancies Act 1997* (Vic) s 64(2).

<sup>93</sup> *Residential Tenancies Act 2010* (NSW) s 67.

Under NSW law, landlords have the right to seek compensation from the tenant if the modification work was not done to a satisfactory standard, or, if not rectified, is likely to adversely affect the landlord's ability to re-let the property.<sup>94</sup>

These provisions better balance the interests of tenants and landlords than the existing requirement for mandatory removal of modifications under the Victorian RTA.

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<sup>94</sup> *Residential Tenancies Act 2010* (NSW) s 69.

# Overcome barriers to enforcement

## Recommendation

- The Residential Tenancies Act Review should consider the introduction of a repairs and maintenance bond and a Housing Ombudsman.

Tenants currently have to initiate action through CAV or the Victorian Civil and Administrative Tribunal (VCAT) to enforce repair rights. These are often difficult avenues and other enforcement methods should be considered by the RTA Review. Options include the introduction of a repairs and maintenance bond and a Housing Ombudsman. This would allow more equitable, efficient and cost-effective enforcement of current repair rights and mandatory property standards under a new minimum standards regime.

The current system sets down two enforcement pathways: one for urgent repairs, and one for non-urgent repairs. For urgent repairs, the tenant can arrange the repairs if the landlord has not carried out the repair immediately, and the landlord must reimburse the tenant for these costs up to a maximum of \$1800. A tenant must go to VCAT if they cannot afford to carry out the repair, or the repair costs more than \$1800, or the landlord will not reimburse them.<sup>95</sup> Accordingly, VCAT is the only option for many low-income and vulnerable households to enforce urgent repair rights; the very group least able to initiate legal proceedings.

For non-urgent repairs, the RTA currently sets down a convoluted and lengthy process for enforcing repair rights. If a landlord has not carried out a repair within two weeks of being notified by the tenant of the need for repairs, the tenant can complain to CAV. If CAV finds that repairs are required and the landlord still does not carry out those repairs, the tenant must go to VCAT to enforce their repair rights.<sup>96</sup> It can take months to resolve repair disputes using these mechanisms. Even if the requirement for a CAV investigation were removed in relation to non-urgent repairs, repairs would still be delayed by the need to go to VCAT.

Further, many low-income and vulnerable tenants find it too intimidating to approach a government agency such as CAV, and cannot access VCAT. The Consumer Action Law Centre, the Tenants Union of Victoria and the WEstjustice Western Community Legal Centre recently commissioned research on tenant experiences of VCAT. This study found that the single biggest barrier to taking VCAT action is fear of repercussions from landlords or real estate agents, such as a rent increase or notice to vacate. Tenants are also often intimidated by VCAT procedure, with the application

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<sup>95</sup> *Residential Tenancies Act 1997 (Vic)* ss 72, 73.

<sup>96</sup> *Residential Tenancies Act 1997 (Vic)* ss 74, 75.

process seen as particularly complicated and legalistic. The report made recommendations that could alleviate some of these problems, such as strengthening protections in the RTA against retaliatory actions by landlords in response to tenants' enforcement of rights.<sup>97</sup>

While improvements could be made to VCAT processes to make them more accessible, VCOSS considers that this would side-step the more fundamental issue, which is that the current pathways for enforcing repair rights are disproportionate and ill-suited to the nature of the legal problem. Tenants are simply seeking often basic, inexpensive repairs so that they can live in healthy, safe and secure, and affordable homes. The enforcement process should prioritise these needs of the tenant and ensure that repairs are carried out as quickly as possible, rather than delaying repairs through the requirement to go to VCAT. VCOSS recommends that the RTA Review consider the introduction of a repairs and maintenance bond and a Housing Ombudsman.

## Repairs and maintenance bond

Victoria has the opportunity to create safer, healthier housing by introducing a landlord bond for repairs and maintenance. Under a bond scheme, a set amount of funds would need to be set aside by the landlord for repairs and maintenance. Tenants could make a claim on the bond when the landlord does not carry out repairs within the current statutory periods: for urgent repairs, a claim could be made if the repairs were not immediately carried out; for non-urgent repairs, a claim could be made if the landlord has not carried out the repair within two weeks of notification by tenants.

A repairs and maintenance bond would particularly benefit low-income and vulnerable tenants who struggle to enforce their rights through CAV and VCAT. A bond scheme would also create an incentive for landlords to bring a home to standard before tenancies start to minimise bond claims.

Landlords would have to be protected against improper claims on the bond. This might involve the right to object to a proposed bond claim at VCAT on specified grounds, such as where the proposed repair is allegedly excessive in the circumstances. The objection period would have to be limited to avoid delaying repairs.

A repairs and maintenance bond would better balance the rights and responsibilities of landlords and tenants. It is currently only tenants who are required to pay a bond and protect the landlord against the risk of damage to the home and associated financial costs. By contrast, landlords are not required to protect tenants against the risk of unmet repair needs and its impact on tenant health, safety and security, and their capacity to afford basic costs of living. This situation is particularly untenable given that 70 per cent of rental property owners are in the top two income quintiles, while tenants are commonly lower-income earners.<sup>98</sup>

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<sup>97</sup> Cameron Ralph, *Review of Tenants' and Consumers' Experience of Victorian Civil and Administrative Tribunal: Residential Tenancies List and Civil Claims List*, Research report prepared for Consumer Action Law Centre, Tenants Union of Victoria, and WEstjustice Western Community Legal Centre, July 2016, pp.10-12.

<sup>98</sup> Roger Wilkins, *The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 14 – The 11<sup>th</sup> Annual Statistical Report of the HILDA Survey*, Melbourne Institute of Applied Economic and Social Research, 2016, pp.74-75; Australian Housing and Urban Research Institute, *AHURI Brief: Housing tenure by income level for Australian households, 2013-14*,

The introduction of a repairs and maintenance bond is also likely to benefit government budgetary outlays, by reducing repair disputes escalating to CAV and VCAT. Further, the bond would not require new administrative infrastructure, as it could be administered by the existing Residential Tenancies Bond Authority along similar lines to the tenants' bond scheme.

## Housing Ombudsman

The RTA Review should also consider the introduction of a Housing Ombudsman. A Housing Ombudsman Service (HOS) already operates in England and Wales, which has the capacity to hear complaints from tenants that cannot be resolved between the tenant and the landlord. VCOSS envisages that a Victorian Housing Ombudsman could operate in a similar manner to the HOS and perform some of the early 'frontline' dispute resolution functions that are currently performed by CAV, and mediate disputes that would otherwise be heard by VCAT.

For low-income and vulnerable tenants, a Housing Ombudsman may be more approachable and accessible than a government agency such as CAV. In particular, migrants who have previous negative experiences with government and police can fear approaching government agencies for assistance. Ombudsmen, by contrast, can be perceived as safer options for dispute resolution.

At a minimum, a Housing Ombudsman should play a conciliatory role in disputes between landlords and tenants. In addition, the RTA Review should consider whether a Housing Ombudsman should have enforcement powers that would enable it to take action against landlords, particularly those who repeatedly and systemically breach their duties in relation to minimum property standards and repairs. For example, the Fair Work Ombudsman has the power to issue infringement notices and take other enforcement action against non-compliant employers.

A Housing Ombudsman would also be well-placed to issue information about rights and responsibilities in relation to mandatory minimum property standards and repair rights, and identify systemic issues within the rental market. An ombudsman would be able to recognise any widespread deficiencies in relation to particular housing standards or repair issues and suggest targeted actions that could be taken to resolve those deficiencies by landlords, government and industry (for example, in relation to thermal efficiency). Consideration of introducing a Housing Ombudsman should take into account its relationship to other oversight agencies, so people have a clear understanding of the correct complaints agency to approach.<sup>99</sup>

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[https://www.ahuri.edu.au/policy-development/ahuri-briefs/housing-tenure-by-income-level-for-australian-households?utm\\_source=website&utm\\_medium=homepage&utm\\_campaign=slider1](https://www.ahuri.edu.au/policy-development/ahuri-briefs/housing-tenure-by-income-level-for-australian-households?utm_source=website&utm_medium=homepage&utm_campaign=slider1).

<sup>99</sup> Victorian Council of Social Service, *A more accountable Victoria: VCOSS response to discussion papers on VAGO and the Victorian Ombudsman*, 2015

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